

AMENDED IN ASSEMBLY AUGUST 8, 2006

AMENDED IN ASSEMBLY JUNE 22, 2006

AMENDED IN SENATE MAY 26, 2006

AMENDED IN SENATE MAY 8, 2006

SENATE BILL

No. 1750

Introduced by Senator Vincent

February 24, 2006

An act to amend Sections 8265 and 8448 of, to repeal Section 8269 of, and to repeal and add Sections 8267 and 8268 of, the Education Code, relating to child development centers, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1750, as amended, Vincent. Child development centers: funding and auditing.

Existing law establishes a system of child care and development services for children up to 13 years of age and provides certain requirements for the payment by the state for these child care and development services. Existing law establishes reimbursement rates, including requirements for their adjustment and application. ~~Existing~~ *Existing* law requires specified audits of agencies to include, among other things, a sampling of the evidence of fees paid by families of nonsubsidized children, the average daily enrollment of subsidized and nonsubsidized children, and the average number of days of service provided to subsidized children.

This bill would repeal the above requirements relating to those audits. ~~The bill would require the Superintendent of Public Instruction to adopt rules, regulations, and guidelines to facilitate the funding and~~

~~reimbursement procedures, as specified, and would require the Superintendent and the Controller to establish procedures to advance child care funds to contracting agencies on a timely basis.~~

The bill would require contractors to account separately for all sources of funds when they receive state funds in addition to the standard reimbursement rate. ~~This bill would require the department to establish protocols to ensure that a contractor is not reimbursed twice for the same activity, personnel, or function, and would prohibit the department from including any charitable donations received by any charitable or nonprofit organizations in any calculations of the state funding available to child care contractors.~~

The bill would repeal the requirement that specified licensed community care providers include a sampling of fees paid by families of nonsubsidized children, the average enrollment of subsidized and nonsubsidized children, the average number of days of service provided to subsidized children, and the services provided to subsidized children pursuant to the terms of the contract of the provider.

The bill would require the annual single independent financial and compliance audit to be made by independent auditors in conformity with auditing standards generally accepted in the United States and the standards applicable to financial audits contained in a certain publication issued by the Comptroller General of the United States.

The bill would require private child care providers that expend \$500,000 or more in total federal funds to conduct the annual single independent financial and compliance audit in compliance with specified federal provisions and would require audits of governmental and other public entities, school districts, county offices of education, and community college school districts, to meet specified requirements. The bill would require annual single independent financial and compliance audits that are not required to comply with specified federal provisions to report income and expenditures from sources other than the department that are used to supplement or enhance the department child development program, or to fund nonsubsidized children served in the same classrooms as subsidized children, and to account for these funds from funding sources other than the department as specified.

The bill would state the finding and declaration of the Legislature that the department is conducting discussions with other funding sources regarding the manner in which restricted funds should be

expended. The bill would require departmental meetings regarding the use of restricted funds to be open to the public and would require the department to invite all interested parties to participate in the meetings. The bill would require the department to report on its progress in negotiating an agreement with other funding sources regarding the treatment of restricted funds, and any proposed amendments to the Education Code, as part of any related hearings of the relevant policy and fiscal committees of the Legislature during the 2006–07 Regular Session.

This bill also would reorganize existing provisions of law and would make additional, nonsubstantive changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) There is increasing interest in expanding the availability of
4 preschools and child development centers in California, which
5 may be funded by multiple sources and funding agencies.

6 (b) ~~It~~*In recent years, multiple funding entities for child*
7 *development services in addition to the state, including the First*
8 *5 California commissions, Head Start, local government entities,*
9 *and non-governmental funding entities, have developed, each*
10 *with an interest in developing quality, center-based services for*
11 *children from low-income households in the community. These*
12 *funding entities and their expansion and enrichment activities*
13 *are to be encouraged. However, it is in the interest of the state to*
14 *protect against supplanting the existing services for low-income*
15 *families, and to ensure that providers of child care are not paid*
16 *twice for the same service.*

17 (c) In order to avoid a chilling effect on private fundraising for
18 preschools and child development centers, unrestricted charitable
19 funds raised by nonprofit organizations to support these child
20 care programs should not be deducted from the public funding
21 available to the child care programs.

(d) Funding regulations and auditing procedures should be made explicit to all parties in advance of their application.

SEC. 2. Section 8265 of the Education Code is amended to read:

8265. (a) (1) The Superintendent shall implement a plan that establishes reasonable standards and assigned reimbursement rates, which vary with the length of the program year and the hours of service.

(2) Parent fees shall be used to pay reasonable and necessary costs for providing additional services.

(3) When establishing standards and assigned reimbursement rates, the Superintendent shall confer with applicant agencies.

(4) The reimbursement system, including standards and rates, shall be submitted to the Joint Legislative Budget Committee.

(5) The Superintendent may establish any regulations he or she deems advisable concerning conditions of service and hours of enrollment for children in the programs.

(b) The standard reimbursement rate shall be three thousand five hundred twenty-three dollars (\$3,523) per unit of average daily enrollment for a 250-day year, increased by the cost-of-living adjustment granted by the Legislature beginning July 1, 1980.

(c) The plan shall require agencies having an assigned reimbursement rate above the current year standard reimbursement rate to reduce costs on an incremental basis to achieve the standard reimbursement rate.

(d) (1) The plan shall provide for adjusting reimbursement on a case-by-case basis, in order to maintain service levels for agencies currently at a rate less than the standard reimbursement rate. Assigned reimbursement rates shall be increased only on the basis of one or more of the following:

(A) Loss of program resources from other sources.

(B) Need of an agency to pay the same child care rates as those prevailing in the local community.

(C) Increased costs directly attributable to new or different regulations.

(D) Documented increased costs necessary to maintain the level of service of the prior year and ensure the continuation of threatened programs.

(2) Child care agencies funded at the lowest rates shall be given first priority for increases.

(e) The plan shall provide for expansion of child development programs at no more than the standard reimbursement rate for that fiscal year.

(f) The Superintendent may reduce the percentage of reduction for any public agency:

(1) That is currently serving more than 400 children; or

(2) That has in effect a collective bargaining agreement; or

(3) For which other extenuating circumstances apply as determined by the Superintendent.

SEC. 3. Section 8267 of the Education Code is repealed.

SEC. 4. Section 8267 is added to the Education Code, to read:

8267. (a) The Superintendent shall adopt rules, regulations, and guidelines to facilitate the funding and reimbursement procedures required by this chapter.

(b) The Superintendent and the Controller shall establish the necessary procedures to advance child care funds to contracting agencies on a timely basis.

SEC. 5. Section 8268 of the Education Code is repealed.

SEC. 6. Section 8268 is added to the Education Code, to read:

8268. (a) Any contractor may, in its discretion, pay from its own funds additional sums for the child care of any subsidized child, and the state, a county, or other funding entity may augment a program or fund additional child care openings at the same center. *child and may accept funds from the state, a county, or other funding entity to augment a program or fund additional child care openings.*

(b) In any case where additional funding is provided, pursuant to subdivision (a), for a program funded by a standard reimbursement rate, the contractor shall separately account for all sources of funds. ~~The State Department of Education shall establish protocols to ensure that the state is not reimbursing a contractor for the same activity, personnel, or function for which another funding agency has paid.~~ *to subdivision (a), the contractor shall separately account for all sources of funds to ensure that the state is not reimbursing a contractor for the same activity, personnel, or function for which another funding entity has paid.*

~~(c) General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be deducted from the cost of providing services calculated by the contractor. The donations~~ *Unrestricted funds received by a contractor shall not be deducted by the State Department of Education when it calculates the cost of providing child care and development services. Unrestricted donations and contributions shall not be considered in any determination of the state funding available to the contractor made by the State Department of Education department.*

SEC. 7. Section 8269 of the Education Code is repealed.

SEC. 8. Section 8448 of the Education Code is amended to read:

8448. As used in this article:

(a) “Financial and compliance audit” means a systematic review or appraisal to determine each of the following:

(1) Whether the financial statements of an audited organization fairly present the financial position and the results of financial operations in accordance with generally accepted accounting principles.

(2) Whether the organization has complied with laws and regulations that may have a material effect upon the financial statements.

(b) “Public accountants” means certified public accountants, or state licensed public accountants.

(c) “Independent auditors” means public accountants who have no direct or indirect relationship with the functions or activities being audited or with the business conducted by any of the officials or contractors being audited.

(d) “Generally accepted auditing standards” means the auditing standards set forth in the financial and compliance element of the “Government Auditing Standards” issued by the Comptroller General of the United States and incorporating the audit standards of the American Institute of Certified Public Accountants.

(e) “Direct service contract” means any contract with any public or private entity for child care and development programs, resource and referral programs, and programs contracting to provide support services as defined in Section 8208.

(f) “Nonprofit organization” means an organization described in Section 501(c)(3) of the Internal Revenue Code of 1954 that is exempt from taxation under Section 501(a) of that code, or any nonprofit, scientific, or educational organization qualified under Section 23701d of the Revenue and Taxation Code.

(g) (1) Annually, there shall be a single independent financial and compliance audit of organizations that contract with the state under a direct service contract. Any such audit shall include an evaluation of the accounting and control systems of the direct service contractor and of the activities by the contractor to comply with the financial requirements of direct service contracts received by the contractor from the state agency. The financial and compliance requirements to be reviewed during the audit shall be those developed and published by the State Department of Education in consultation with the Department of Finance. Audits carried out pursuant to this section shall be audits of the contractor rather than audits of individual contracts or programs. In the case of any contractor that receives less than twenty-five thousand dollars (\$25,000) per year from any state agency, the audit required by this section shall be conducted biennially, unless there is evidence of fraud or other violation of state law in connection with the direct service contract. The cost of the audit may be included in direct service contracts.

(2) The organization receiving funds from the state shall be responsible for obtaining the required financial and compliance audits of the organization and any subcontractors, except for direct service subcontracts and other subcontracts exempt from State Department of Education review, as agreed to by the Departments of Finance and General Services. ~~The audits~~

(3) ~~The audit~~ shall be made by independent auditors in ~~accordance with generally accepted auditing standards~~ *conformity with auditing standards generally accepted in the United States and the standards applicable to financial audits contained in the publication entitled “Government Auditing Standards,” as issued by the Comptroller General of the United States.* The audit shall be completed by the 15th day of the fifth month following the end of the fiscal year of the contractor. A copy of the required audit shall be filed with the State Department of Education upon its completion. In the event an audit is not filed, the State Department of Education shall notify

1 the organization of the contract violation. The audit report filed
2 shall be an integral part of the direct service contract file.

3 (h) (1) Nothing in this article limits the authority of the State
4 Department of Education to make audits of direct service
5 contracts. However, if independent audits arranged for by direct
6 service contractors meet generally accepted auditing standards,
7 the State Department of Education shall rely on those audits and
8 any additional audit work shall build upon the work already
9 done.

10 (2) Nothing in this article precludes the state from conducting,
11 or contracting for the conduct of, contract performance audits
12 that are not financial and compliance audits.

13 (3) Nothing in this article limits the state's responsibility or
14 authority to enforce state law or regulations, procedures, or
15 reporting requirements arising pursuant thereto.

16 (4) Nothing in this article limits the responsibility of the State
17 Department of Education to provide an independent appeal
18 procedure according to the provisions of the Administrative
19 Procedure Act (Chapter 5 (commencing with Section 11500) of
20 Part 1 of Division 3 of Title 2 of the Government Code).

21 (i) Private nonprofit and private for profit entities that provide
22 child care and development services and that expend five
23 hundred thousand dollars (\$500,000) or more in total federal
24 funds, including all federal funds received by the entity whether
25 or not used in connection with a child development program, are
26 required to conduct the annual single independent financial and
27 compliance audit in accordance with the federal Office of
28 Management and Budget Circular A-133, as the document
29 appeared after it was revised to show changes published in the
30 Federal Register on June 27, 2003, including the ~~organization~~
31 ~~wide~~ *organizationwide* audit requirements explained in subpart C
32 of Circular A-133. Audits of governmental and other public
33 entities that provide child care and development services,
34 excluding school districts, county offices of education, and
35 community college districts, shall also comply with the
36 requirements of the federal Office of Management and Budget
37 Circular A-133. Audits of school districts, county offices of
38 education, and community college school districts, shall comply
39 with all applicable state Education Code requirements.

(j) Annual single independent financial and compliance audits that are not required to comply with the federal organization wide audit requirements included in subpart C of the federal Office of Management and Budget Circular A-133 shall report income and expenditures from sources other than the State Department of Education that are used to supplement or enhance the department child development program, or to fund nonsubsidized children served in the same classrooms as subsidized children. These funds from funding sources other than the department may be accounted for in the accounts of the agencies under either the federal Child Care and Development Fund, which has the same meaning as in Section 98.2 of Title 45 of the Code of Federal Regulations, or any other fund maintained by the contractor, provided that the income and any expenses are reported in the audit *and are readily identifiable in the accounting records of the contractor.*

SEC. 9. (a) The Legislature finds and declares that the State Department of Education is conducting discussions with other funding entities regarding the manner in which restricted funds shall be handled. Section 6 of this act specifies the manner in which unrestricted funds from any source shall be used in calculations regarding child care and development services costs and funding. However, this act does not require any particular treatment of restricted funds by the department.

(b) Any department meetings regarding the use of restricted funds shall be open to the public and the department shall invite all interested parties to participate in the meetings. The department shall report upon its progress in negotiating an agreement with other child development funding entities on the treatment of restricted funds, and any proposed amendments to the Education Code, as part of any related hearings of the relevant policy and fiscal committees of the Legislature during the 2006–07 Regular Session.

~~SEC. 9.~~

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

- 1 In order to ensure the proper fiscal accounting for the
- 2 expansion of preschools and child care development centers, it is
- 3 necessary that this act take effect immediately.

O